

§ 1040.48

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any education institution or entity which admits as students only or predominantly members of one sex, if giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for an award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 1040.48 Employment criteria.

A recipient shall not administer or operate any text or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful

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performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ 1040.49 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

§ 1040.50 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

§ 1040.51 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a